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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda ID #12906
RESOLUTION E-4654
May 1, 2014**

R E S O L U T I O N

Resolution E-4654. Southern California Edison Company requests approval of three deviated power purchase agreements with governmental water agencies.

PROPOSED OUTCOME: This Resolution approves Southern California Edison Company's deviations to its power purchase agreements with governmental water agencies for its Water Agency Tariff for Eligible Renewables program.

SAFETY CONSIDERATIONS: The deviations to terms and conditions in the Water Agency Tariff for Eligible Renewables power purchase agreements approved in this resolution do not require changes in SCE's facility operations and there are no incremental safety implications associated with approval of these deviations beyond the status quo.

ESTIMATED COST: There are no additional costs associated with this resolution.

By Advice Letter (AL) 2995-E filed on January 23, 2014.

SUMMARY

Southern California Edison Company's (SCE) deviations to terms and conditions in power purchase agreements (PPAs) with three governmental water agencies eligible for SCE's Water Agency Tariff for Eligible Renewables (WATER) program are approved.

SCE filed AL 2995-E on January 23, 2014 requesting California Public Utilities Commission (Commission) approval of deviations to terms and conditions in

three PPAs (three WATER PPAs) with Calleguas Municipal Water District, Lower Tule River Irrigation District, and Monte Vista Water District (governmental water agencies) that were eligible for the portion of the Public Utilities Code (PU Code) Section 399.20 feed-in tariff (FiT) program also known as SCE's WATER program.¹ The three WATER PPAs were executed in July 2012 with terms and conditions approved for SCE's California Renewable Energy Small Tariff (CREST) PPAs instead of with the terms and conditions that had been approved for PPAs in the WATER program.^{2,3}

The three WATER PPAs under review represent three online and generating public water/wastewater facilities with an aggregate capacity of 2.982 MW.⁴ This resolution finds that the deviations to the terms and conditions in the three WATER PPAs are reasonable and approves cost recovery for the three WATER PPAs between SCE and the governmental water agencies.

¹ All further references to sections refer to Public Utilities Code unless otherwise specified.

² The CREST program was adopted in Decision (D.)11-11-012. *See* D.11-11-012, at Ordering Paragraphs 1-9.

³ The WATER PPAs' terms and conditions were approved in Commission Resolution E-4137.

⁴ SCE executed a total of 5.232 MW through RPS procurement from its WATER program.

The following table provides a summary of the three WATER PPAs:

Government Agency	Resource Type	Project Location	Capacity (MW)	Annual Deliveries (GWh)	Contractual COD⁵	Term
Calleguas Municipal Water District	Small Hydro	Thousand Oaks, CA	.717	1.6	10/1/2012	20
Lower Tule Irrigation District		Porterville, CA	1.4	.775	8/1/2012	10
Monte Vista Water District		Montclair, CA	.865	1.5	12/1/2012	20

⁵ Pursuant to Section 2.9(a) of the WATER PPAs, the seller has 18 months from the effective date to come online subject to possible extension for transmission and permitting delays. Calleguas came online on 10/1/2012. Lower Tule came online on 8/1/2012. Monte Vista's 18-month commercial operation deadline is 1/20/2014, but Monte Vista requested an extension pursuant to 2.9(a).

BACKGROUND

Overview of the Renewables Portfolio Standard Program

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).⁶ The RPS program is codified in Sections 399.11-399.31. Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.⁷

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

Background of SCE's WATER Program

In D.07-07-027 the Commission implemented Section 399.20 ordering each investor-owned utility (IOU) to file an AL submitting a tariff and standard contract for public water and wastewater agencies, which became known as SCE's WATER program. D.07-07-027 also ordered SCE to file an AL for a tariff and standard contract for customers who are not public water or wastewater agencies, which became known as SCE's CREST program. The Commission approved SCE's CREST and WATER programs in Resolution E-4137 on June 18, 2008. Both the WATER and CREST programs were closed on July 24, 2013 when the Renewable Market Adjusting Tariff (Re-MAT) became effective.

In D.11-11-012, adopted by the Commission on November 10, 2011, the Commission approved revisions to certain terms and conditions in SCE's CREST

⁶ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

⁷ Decision (D.)11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

PPAs.⁸ D.11-12-012 did not address the WATER PPAs' portion of the Section 399.20 tariff and as a result, unlike the CREST portion of the Section 399.20 tariff, the WATER program was not amended to contain D.11-11-012's revisions to contracts' terms and conditions. However, the three WATER PPAs with the governmental water agencies were executed in July 2012 containing D.11-11-012's contract revisions (the terms and conditions from the revised CREST PPAs), which the Commission never approved for the WATER program. As such, SCE is requesting a one-time Commission approval for the deviations in the terms and conditions in the three WATER PPAs with the governmental water agencies. Pursuant to General Order (GO) 96-B, this AL qualifies as a Tier 3 AL and requires disposition via a resolution.⁹

NOTICE

Notice of AL 2995-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the AL was mailed and distributed in accordance with Section 3.14 of GO 96-B.

PROTESTS

No protests were filed.

DISCUSSION

SCE requests approval of three deviated power purchase agreements with governmental water agencies eligible for the portion of the Section 399.20 feed-in tariff program formerly known as SCE's WATER program.

SCE requested that the Commission issue a resolution for the filed Advice Letter that contains the following findings:

1. Approval of the WATER contracts in their entirety.

⁸ Revisions included: a) modification of Section 2.8 (Date of Initial Operation), Section 2.9 (Initial Operation Deadline), Section 4 (Term and Termination), and Section 12 (Assignment); b) removal of Section 14.2 (Future Modifications) and 14.4 (Application for Modifications); and c) the addition of provisions regarding curtailment, development security, force majeure, indemnification, and interconnection agreement options as Sections 8, 9, 19 and 20, respectively.

⁹ GO 96-B, Energy Industry Rule 5.3 states matters appropriate to Tier 3 disposition include: (8) Service to a government agency pursuant to General Rule 8.2.3.

2. A finding that any electric energy sold or dedicated to SCE pursuant to the WATER contracts constitutes procurement by SCE from an eligible renewable resource for the purpose of determining SCE's compliance with the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources.
3. A finding that all procurement under the WATER contracts counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 33 percent (or such other percentage as may be established by law) of its retail sales from eligible renewable resources by 2020 (or such other date as may be established by law)
4. A finding that the WATER contracts, and SCE's entry into the WATER contracts, are reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the WATER contracts, subject only to further review with respect to the reasonableness of SCE's administration of the WATER contracts
5. Any other and further relief as the Commission finds just and reasonable.

Energy Division Evaluated the three WATER PPAs on the Following Grounds:

- Consistency of Deviations in Terms and Conditions with Commission Decisions and General Oder 96-B
- Procurement Review Group Participation
- Safety Considerations

Consistency of Deviations in Terms and Conditions with Commission Decisions and General Oder 96-B

D.11-11-012 approved CREST contract revisions for non-public water/wastewater agency participants in the Section 399.20 tariff.¹⁰ However, D.11-11-012 did not approve the same contract revisions for public water/wastewater agency participants in the Section 399.20 tariff.¹¹ SCE

¹⁰ Non-public water/wastewater agencies were eligible to participate in the CREST portion of the Section 399.20 tariff.

¹¹ Public water/wastewater agencies were eligible to participate in the WATER portion of the Section 399.20 tariff.

executed the three WATER PPAs with the governmental water agencies using the revised CREST contract terms and conditions that were approved in D.11-11-012. D.11-11-012 never approved revisions for the WATER portion of the Section 399.20 tariff.

Pursuant to GO 96-B, General Rule 8.2.3, SCE may provide service to a government agency "...under terms and conditions otherwise deviating from its tariffs...."¹² The three public water agencies selling energy in the three WATER PPAs are "government agencies" under General Rule 8.2.3, thus allowing SCE's deviations to the terms and conditions in the three WATER PPAs with the governmental water agencies.¹³ For a more detailed description of the deviations in SCE's three WATER PPAs, see Appendix A of this resolution.

SCE's deviations to the terms and conditions in the three WATER PPAs are reasonable pursuant to General Order 96-B, General Rule 8.2.3, and are approved by the Commission.

The CPUC approves cost recovery for the three WATER PPAs between SCE and the governmental water agencies.

Procurement Review Group Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.

According to SCE, participants in its PRG included representatives from the Commission's Energy and Legal Divisions, the Office of Ratepayer Advocates,

¹² At all times, a utility other than a telephone corporation may provide service (other than resale service) to a government agency...under terms and conditions otherwise deviating from its tariffs then in effect. The utility may begin such service without prior Commission approval, but the utility shall promptly submit an advice letter to the appropriate Industry Division to notify the Commission of the utility's provision of such service and of the rates, charges, terms and conditions under which the service is provided.

¹³ General Rule 8.2.3 includes "the State of California and its political subdivisions and municipal corporations, including the departments thereof...." in its definition of government agencies.

the Utility Reform Network, California Utility Employees, and the California Department of Water Resources. The deviations to the three WATER PPAs were presented to the PRG on March 20, 2013.

Pursuant to D.02-08-071, SCE complied with the Commission's rules for involving the Procurement Review Group.

Safety Considerations

Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

The three WATER PPAs require that the governmental water agencies represent, warrant, and covenant that they will operate and maintain the facilities according to established Prudent Electric Practices. The contractual provisions of the three WATER PPAs are also consistent with the provisions of Section 451 and allow SCE inspection rights to check compliance with other related obligations.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Section 399.13, the California Energy Commission (CEC) certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS PPA, the Commission has required standard and non-modifiable "eligibility" language in all RPS PPAs. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁴

The Commission requires a standard and non-modifiable clause in all RPS PPAs that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to these PPAs is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any

¹⁴ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), D.11-12-020 and D.11-12-052, or other applicable law.”¹⁵

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is not an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of such contracts.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS AND CONCLUSIONS

1. Southern California Edison Company’s deviations to the terms and conditions in the Water Agency Tariff for Eligible Renewables Power Purchase Agreements are reasonable pursuant to General Order 96-B, General Rule 8.2.3, and are approved by the Commission.

¹⁵ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

2. Procurement pursuant to the Water Agency Tariff for Eligible Renewables Power Purchase Agreements is procurement from eligible renewable energy resources for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.
3. The immediately preceding finding shall not be read to allow generation from a non-Renewables Portfolio Standard eligible renewable energy resource under the Power Purchase Agreements to count towards a Renewables Portfolio Standard compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with the Water Agency Tariff for Eligible Renewables Power Purchase Agreements.
4. The Water Agency Tariff for Eligible Renewables Power Purchase Agreements with Calleguas Municipal Water District, Lower Tule River Irrigation District, and Monte Vista Water District should be approved in their entirety.
5. Advice Letter 2995-E should be approved effective today without modifications.
6. Payments made by SCE under the Water Agency Tariff for Eligible Renewables Power Purchase Agreements are fully recoverable in rates over the life of the Power Purchase Agreements, subject to Commission review of SCE's administration of the Power Purchase Agreements.

THEREFORE IT IS ORDERED THAT:

1. The power purchase agreements between Southern California Edison Company and Calleguas Municipal Water District, Lower Tule River Irrigation District, and Monte Vista Water District as proposed in Advice Letter 2995-E are approved without modifications. Advice Letter 2995-E is approved without modifications.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 1, 2014; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Appendix A

Matrix of Deviations to the Terms and Conditions in the three WATER PPAs with Governmental Water Agencies

Section of PPA	Change	Summary of Change
2.9	<p>Initial Operation Deadline</p> <p>(a) Subject to any extensions made pursuant to Sections 2.9(b) or 2.9(c), and further subject to Section 2.9(d), Initial Operation must be no later than the earlier of (i) <i>[sixty (60) days] {for Baseload} [one hundred twenty (120) days] {for Intermittent}</i> from the Initial Synchronization Date, and (ii) eighteen (18) months from the date of PPA Effective Date (“Initial Operation Deadline”).</p> <p>(b) If all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Producer’s interconnection agreement and required to interconnect the Generating Facility to SCE’s Distribution System have not been completed and placed into operation by the CAISO or the Transmission Provider on the estimated completion date set forth in Producer’s interconnection agreement, then, upon SCE’s receipt of Notice from Producer, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the PPA Effective Date, the Initial Operation Deadline shall be extended on a day-for-day basis until all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Producer’s interconnection agreement and required to interconnect the Generating Facility to SCE’s Distribution System have been completed and placed into operation by the CAISO or the Transmission Provider, except to the extent any delay in such completion and placement into operation results from Producer failing to complete its obligations, take all actions and meet all of its deadlines under Producer’s interconnection agreement needed to ensure timely completion and operation of such interconnection facilities, transmission upgrades and new transmission facilities.</p> <p>(c) If Producer has not obtained Permit Approval on or before that date that is ninety (90) days before the date that is eighteen (18) months from the PPA Effective Date, then, upon SCE’s receipt of Notice from Producer, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the PPA Effective Date, the Initial Operation Deadline shall be extended on a day-for-day basis until Producer obtains Permit Approval, except to the extent any such delay results from Producer failing to take all commercially reasonable actions to apply for and</p>	<p>MODIFICATION:</p> <p>Adds a possible day-for-day extension of up to 6 months to the Initial Operation Deadline for transmission and permitting delays. Changes Initial Operation Date to greater of i) 60 days from initial Synch (for baseload) or 120 days from Initial Synch for intermittent (a new condition); or ii) 18 months from Effective Date (a condition already in the WATER agreement) .</p>

	<p>meet all of its requirements and deadlines to obtain such Permit Approval.</p> <p>(d) Notwithstanding anything in this Agreement to the contrary, the Initial Operation Deadline may not be later than twenty-four (24) months from the PPA Effective Date. The actual date of Initial Operation shall be within 18 months of the last date entered in Section 17 of this Agreement.</p>	
4.	<p>TERM AND TERMINATION: <u>REMEDIES</u></p> <p>4.1</p> <p><u>SCE may terminate this Agreement on Notice, which termination becomes effective on the date specified by SCE in such Notice, if</u></p> <p style="padding-left: 40px;">(a) This Agreement shall become effective on the Effective Date. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:</p> <p style="padding-left: 40px;">(a) A termination date agreed to in writing by the Parties.</p> <p style="padding-left: 40px;">(b) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the day following the date the electric Service Account through which Producer's Renewable Generating Facility is interconnected to SCE's Distribution System is closed or terminated.</p> <p style="padding-left: 40px;">(c) At 12:01 A.M. on the day following the completion of: (check one)</p> <p style="padding-left: 40px;"><input type="checkbox"/> 10 / <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 15 / <input type="checkbox"/> 20 Term Years from Initial Operation per Section 2.8.</p> <p style="padding-left: 40px;">4.2 SCE may elect to terminate this Agreement at 12:01 A.M. on the 61st day after SCE provides written Notice pursuant to Section 10 of this Agreement to the Producer of SCE's intent to terminate this Agreement for one or more of the following reasons:</p> <p style="padding-left: 40px;">(a) A change in applicable Tariffs as approved or directed by the Commission or a change in any local, state or federal law, statute or regulation, any of which materially alters or otherwise materially affects SCE's ability or obligation to perform SCE's duties under this Agreement;</p> <p style="padding-left: 40px;">(b) Producer fails to remain a Public Water or Wastewater Agency;</p> <p style="padding-left: 40px;">(c) Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, that Producer's Renewable any Generating Facility is</p> <p style="padding-left: 40px;">out of compliance with <u>any</u> terms of this Agreement;</p> <p style="padding-left: 40px;">(b) Producer fails to <u>interconnect</u> and</p>	<p>MODIFICATION:</p> <p>Clarifies and expands SCE termination rights. Allows SCE to terminate with notice should Producer: i) fail to operate the facility in accordance with the terms of the Agreement; ii) abandon the facility; iii) not reach COD in 18 months (subject to possible extension of up to 6 months); or iv) participate in CSI. Also allows for mutual termination rights under certain circumstances, including breaches of representations, covenants and payment obligations, to the extent not cured in the allotted time.</p>

	<p>Operate a generator within the Renewable Generating Facility, in accordance with the terms and conditions set forth in this Agreement, within one hundred and twenty (120) days after SCE delivers electric energy <u>to such Generating Facility</u> for Station Use;</p> <p><u>(c) Producer abandons any Generating Facility;</u></p> <p><u>(d) Electric output from any Generating Facility ceases for twelve (12) consecutive months;</u></p> <p><u>(e) The Term des not commence within eighteen (18) months of the Effective Date, subject to any extensions herein as to which Producer is the Claiming Party or under Section 2.9(b) and 2.9(c);</u></p> <p><u>(f) Producer or the owner of a Site applies for or participates in the California Solar Initiative or any net energy metering tariff with respect to any Generating Facility at such Site; or</u></p> <p>(g) Producer has not installed any of the equipment or devices necessary for any Generating Facility to satisfy the Gross Power Rating of such Generating Facility, as set forth in Section 2.3.</p> <p>4.2 A Party may terminate this Agreement:</p> <p>(a) If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice thereof from the non-breaching Party to the breaching Party;</p> <p>(b) Except for an obligation to make payment when due, if there is a failure of the other Party to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the nonbreaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;</p> <p>(c) If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice thereof from the non-breaching Party to the breaching Party; or</p> <p>(d) In accordance with Section 19.4.</p> <p>(e) This Agreement automatically terminates on the Term</p>	
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	<p>End Date.</p> <p>(f) If a Party terminates this Agreement in accordance with Section 4, such Party will have the right to immediately suspend performance under this Agreement and pursue all remedies available at law or in equity against the other Party (including seeking monetary damages).</p> <p>(e) SCE shall deem the Renewable Generating Facility to be abandoned if SCE provides a Notice to Producer advising Producer of SCE's determination, in its reasonable discretion, that the Renewable Generating Facility is non-operational for any of the following reasons:</p> <p>(1) Producer abandons the Renewable Generating Facility;</p> <p>(2) Output from the Renewable Generating Facility ceases for 12 consecutive months; or</p> <p>(3) Producer fails to achieve Initial Operation within 18 months of the Effective Date; and Producer does not provide a substantive response to such Notice affirming Producer's intent and ability to continue to Operate the Renewable Generating Facility within 15 days of such Notice.</p> <p>4.3 Any agreements attached hereto and incorporated herein shall terminate concurrently with this Agreement unless the Parties have agreed otherwise in writing.</p>	
8	<p><u>CURTAILMENT</u></p> <p><u>8.1 Producer shall promptly curtail the production of the Generating Facility: (i) upon Notice from SCE that SCE has been instructed by the CAISO or the Transmission Provider to curtail energy deliveries; (ii) upon Notice that Producer has been given a curtailment order or similar instruction in order to respond to an Emergency; (iii) if no Schedule was awarded in either the Day-Ahead Market or the Real-Time Market and SCE notifies Producer to curtail the production of the Generating Facility; or (iv) if SCE issues an OSGC Order.</u></p> <p><u>8.2 For each day of the Term, if no CAISO Schedule is awarded for the Forecasted energy in both the Day-Ahead Market and Real-Time Market for such day, and the Generating Facility has not been curtailed pursuant to Section 8.1(i) or (ii), then, so long as Producer's actual availability establishes that the Generating Facility would have been able to deliver but for the fact a CAISO Schedule was not awarded, SCE shall pay Producer the Product</u></p>	<p>NEW PROVISION:</p> <p>Allows SCE to curtail the output of the facility: i) if there is an order from the CAISO or Transmission Provider; ii) to respond to an Emergency; iii) if no Schedule was awarded; or iv) if SCE issues an order to curtail back to the amount of the award. SCE pays the Producer for the energy that would have been delivered but for the curtailment order under scenarios iii and iv.</p>

	<p><u>Price, as adjusted by Appendix G, for the amount of energy Producer would have been able to deliver but for the fact that Producer did not receive a CAISO Schedule. The amount of energy that could have been delivered will be determined in accordance with Section 8.4.</u></p> <p><u>8.3 If SCE bids the energy from the Generating Facility into the Day-Ahead Market or Real-Time Market and the CAISO awards a CAISO Schedule as a result of that bid, SCE shall have the right, but not the obligation, to order Producer to curtail the delivery of energy (an "Over-Schedule Generation Curtailment Order" or "OSGC Order") in excess of a CAISO Schedule awarded pursuant to this Section 8.3 (the "Over-Schedule Generation Curtailment Quantity" or "OSGC Quantity"). SCE shall pay Producer the Product Price, as adjusted by Appendix G, for the OSGC Quantity Producer would have been able to deliver but for the fact that SCE issued an OSGC Order. The amount of energy that could have been delivered will be determined in accordance with Section 8.4.</u></p> <p><u>8.4 SCE shall estimate the amount of energy the Generating Facility would have been able to deliver under Sections 8.2 and 8. 3. SCE shall apply accepted industry standards in making such an estimate and take into consideration the actual availability of the Generating Facility, past performance of the Generating Facility, meteorological data, solar irradiance data (if applicable), and any other relevant information. Producer shall cooperate with SCE's requests for information associated with any estimate made hereunder. SCE's estimates under this Section 8 for the amount of energy that the Generating Facility would have been able to deliver under Sections 8.2 and 8.3 will be determined in SCE's sole discretion.</u></p>	
9	<p>DEVELOPMENT SECURITY.</p> <p>9.1 On or before the thirtieth (30th) day following the Effective Date, Producer shall post and thereafter maintain a development fee (the "Development Security") equal to twenty dollars (\$20) for each kilowatt of the Gross Power Rating. The Development Security will be held by SCE and must be in the form of either a cash deposit or the Letter of Credit. If Producer establishes the Development Security in the form of a cash deposit, SCE shall make monthly Simple Interest Payments to Producer in accordance with the terms of this Agreement.</p> <p>9.2 If, on or before Initial Operation, Producer:</p> <p>(a) Demonstrates to SCE's satisfaction that Producer has installed all of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating of such</p> <p>Generating Facility, SCE shall return the Development Security to Producer within thirty (30) days of the Initial</p>	<p>NEW PROVISION:</p> <p>Adds an obligation for the Producer to provide Development Security of \$20 per kW of the gross power rating of the Facility. This helps incentivize Producers to build the Facility contracted for, as SCE keeps all or a portion of the Development Security if the full project isn't built or if the project does not begin deliveries within the time frames established in the Agreement.</p>

	<p>Operation;</p> <p>(b) Has not installed any of the equipment or devices necessary for any Generating Facility to satisfy any of the Gross Power Rating, Producer shall forfeit, and SCE shall have the right to retain, the entire Development Security and terminate this Agreement; or</p> <p>(c) Has installed only a portion of the equipment or devices necessary for a Generating Facility to satisfy the Gross Power Rating of such Generating Facility, SCE shall return, within thirty (30) days of the Initial Operation, only the portion of the Development Security equal to the product of twenty dollars (\$20) per kW of the portion of the Gross Power Rating available to deliver the Product to SCE at the Point of Common Coupling.</p> <p>This Section 9.2 is subject to any extension of Initial Operation as to which Producer is the Claiming Party or under Section 2.9(b) and 2.9(c).</p>	
12	<p>ASSIGNMENT</p> <p>Producer mays not voluntarily assign <u>this Agreement or its rights or obligations</u> nor delegate its duties under this Agreement without SCE's prior written consent, <u>which consent will not be unreasonably withheld; provided, however, that Producer may, without SCE's consent (and without relieving Producer from liability under this Agreement), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender in connection with any financing for a Generating Facility if (i) such Lender assumes the payment and performance obligations provided under this Agreement with respect to Producer, (ii) such Lender agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) Producer delivers such tax and enforceability assurance as SCE may reasonably request.</u></p> <p>Any assignment <u>of this Agreement by or delegation</u> Producer makes without SCE's written consent is shall not be valid. SCE shall not unreasonably withhold its consent to Producer's assignment of this Agreement.</p>	<p>MODIFICATION:</p> <p>Allows Producer to assign the Agreement or pledge it as collateral under certain circumstances without SCE's consent.</p>
14.2	<p>This Agreement shall, at all times, be subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction.</p>	<p>DELETION:</p> <p>This provision was deleted due to the financing concerns that it raised.</p>
14.3	<p>Notwithstanding any other provisions of this Agreement, SCE shall have the right to unilaterally file with the Commission an application for change in rates, charges,</p>	<p>DELETION:</p> <p>This provision was deleted due to the</p>

	classification, service, Tariffs or any agreement relating thereto; pursuant to the Commission's rules and regulations.	financing concerns that it raised.
19	<p>FORCE MAJEURE</p> <p>19.1 Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.</p> <p>19.2 If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:</p> <p>(a) The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and</p> <p>(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.</p> <p>19.3 The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.</p> <p>19.4 The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.</p>	<p>NEW PROVISION:</p> <p>Adds a "Force Majeure" provision whereby a Party may be relieved of its obligations for a period of time under certain circumstances not in the Party's control.</p>
19	<p>INDEMNIFICATION</p> <p>20.1 Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees)</p>	<p>NEW PROVISION:</p> <p>Adds a mutual indemnification clause and indemnities based on non-compliance with certain contractual provisions.</p>

	<p>for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee; provided, however, that neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.</p> <p>20.2 Producer shall defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon SCE to the extent caused by Producer's failure to fulfill its obligations as set forth in Section 6.3.</p> <p>20.3 Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Sections 2.10 and 18, and Appendices C and D. Notwithstanding anything to the contrary in this Agreement, if Producer fails to comply with the provisions of Section 11, Producer shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any individual or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Producer complied with all of the provisions of Section 11. The inclusion of this Section 20.3 is not intended to create any express or implied right in Producer to elect not to provide the insurance required under Section 11.</p> <p>20.4 All indemnity rights survive the termination of this Agreement for 12 months.</p>	
Appendix F "Definitions"	"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, a Generating Facility or the terms of this Agreement.	NEW PROVISIONS: Adds definitions related to the additional and modified provisions

	<p>“CAISO Schedule,” “CAISO Scheduled” or “CAISO Scheduling” means the action of SCE in submitting bids to the CAISO and receiving all CAISO markets results from the CAISO; <i>provided</i>, that a CAISO market result where the Generating Facility is instructed to deliver zero (0) kWhs is not considered a “CAISO Schedule” for purposes of this Agreement.</p> <p>“California Solar Initiative” means the California Solar Initiative Program implemented and overseen by the CPUC, and as may be revised from time to time.</p> <p>“Claiming Party” has the meaning set forth in Section 19.2.</p> <p>“Credit Rating” means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligation by S&P, Fitch or Moody’s, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned by the other two ratings agencies.</p> <p>“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.</p> <p>“Development Security” has the meaning set forth in Section 9.1.</p> <p>“Emergency” means (i) an actual or imminent condition or situation which jeopardizes the integrity of the electric system or the integrity of any other systems to which the electric system is connected or any condition so defined and declared by the CAISO; or (ii) an emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.</p> <p>“Execution Date” means the date of Producer’s signature in Section 21 and compliance with the eligibility requirements of Schedule CREST and any applicable Commission decision with respect to Schedule CREST.</p>	<p>described above. Moved certain definitions to appear in proper order.</p>
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	<p>construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Producer.</p> <p>“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Producer from an issuer acceptable to SCE that is either a U.S. commercial bank or a U.S. branch of a foreign bank with the bank having a Credit Rating of at least “A-” from S&P and Fitch and “A3” from Moody’s, in a form approved by SCE. Producer must bear the costs of all Letters of Credit.</p> <p>“Moody’s” means Moody’s Investor Services, Inc.</p> <p>“Permit Approval” means approval by the relevant regulatory agencies of any Permit and shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by the pendency of an appeal or other post-issuance challenge to the issuance of the Permit.</p> <p>“Real-Time-Time-Market” has the meaning set forth in the CAISO Tariff.</p> <p>“S&P” means the Standard & Poor’s Rating Group.</p> <p>“Simple Interest Payment” means a dollar amount calculated by multiplying the (i) dollar amount on which the Simple Interest Payment is based, times (ii) the Interest Rate, times (iii) the result of dividing the number of days in the calculation period by 360.</p> <p>“Term End Date” means 12:01 A.M. on the day following the completion of the Term specified in Appendix H.</p> <p>“Term Start Date” means the date of Initial Operation as specified in Appendix H upon SCE’s completion of Appendix H.</p> <p>“Transmission Provider” means any entity or entities responsible for the interconnection of the Generating Facility with SCE’s Distribution System or transmitting the Product on behalf of Producer from the Generating Facility to the Point of Common Coupling.</p> <p>“WDAT” means SCE’s Wholesale Distribution Access Tariff.</p>	
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